IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9217 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJIMKHAN ALIAS AJAMKHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9217 of 2002

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged his detention order dated 11.7.2002 by which he is detained as "dangerous person", under the

provisions of the Prevention of Anti Social Activities Act. Along with the detention order, he has been supplied with the grounds of detention of even date.

2. As per the grounds of detention, the petitioner is a communal minded person and he is damaging the properties of the people belonging to the other community. There is a reference to a criminal case, i.e. CR No.0039/2002 dated 1/3/2002 which is shown to be pending. The aforesaid case is filed under Sections 143, 147, 148, 149, 336, 435, 436, 395, 188 of IPC read with Section 135(1) of the Bombay Police Act. There is also a reference to another case, being Criminal Case No.CR 0042/2002 of the same date. Reference has also been made to statements of some of the witnesses.

3. At the time of hearing of this petition, learned Advocate appearing for the petitioner submitted that the incident in question had taken place on 1st March 2002 and later on, the petitioner was arrested and the detention order was passed on 11.7.2002. He submitted that if really the petitioner's activities were required to be curbed and prevented, immediate action was required to be taken for detaining him. He therefore submitted that there is a delay of about more than four months in passing the order of detention which itself suggests that the petitioner was not required to be detained with an object to prevent him from continuing such activities. He therefore submits that the live chain is not established between the so-called incident and passing the detention order. In order to substantiate his contention, learned Advocate relied upon the decision in the case of Elesh Nandubhai Patel v. Commissioner of Police, reported in 1997(1) GLH 381 wherein this Court, in paragraph 21, has observed as under:

" ... ...

21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some

substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli SCC 61.

... ..."

4. Learned AGP Mr.Pancholi has tried to explain this delay by stating that the statements of witnesses are recorded on 4.7.2002 and 5.7.2002 and there is no delay in passing the order of detention. However, in my view, if the authority was of the opinion that the petitioner is required to be detained forthwith because of his illegal activities such as communalism, it was not necessary for the authority to wait for such a long period even for sending the proposal. Apart from that, the delay in passing the order of detention would frustrate the entire object of the Act. Thus, considering the aforesaid aspect of the matter as well as considering the judgment of this Court as above on the ground of delay in passing the order, the order of detention is required to be quashed and set aside.

5. In the result, the petition is allowed. The order of detention dated 11.7.2002 passed against the detenu is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)
Sreeram.